

Peter Sullivan, Esquire
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California 90071-3197

Dear Mr. Sullivan:

This letter responds to your request, on behalf of the Southern California Independent Lennox Dealers ("SCILD") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's present enforcement intentions with respect to SCILD's proposed cooperative advertising program.

SCILD is a recently formed trade association of Los Angeles area heating and air condition contractor/dealers who, on a nonexclusive basis, sell and service heating and air condition ("HVAC") equipment manufactured by Lennox Industry, Inc. ("LENNOX"). Lennox distributes its products nationwide through independent dealers, and competes in the Los Angeles California area with a number of other HVAC equipment manufacturers including Carrier, Day & Night, Payne, Rheem, Ruud, Heil Quaker, Amana, American Standard, Trane, York and Tempstar. You represent that the approximately 40 dealers who distribute Lennox's HVAC equipment in the Los Angeles area compete with over 1,000 other HVAC contractor/dealers who handle equipment produced by Lennox's rival manufacturers.

It is contemplated that SCILD's membership will consist of some 25-40 Lennox dealers in the Los Angeles area. Membership will be open to all area dealers who meet objective standards with respect to the sale and servicing of Lennox's products. The primary goal of SCILD is to enhance the reputation of and demand for Lennox products in the Los Angeles area, and thereby to increase the small market position that Lennox currently possesses in that market.

SCILD proposes to initiate a cooperative advertising program to enhance the Lennox brand. The program will utilize local radio, direct mail and perhaps newspaper advertising. Lennox will fund the program and assist in the development of the advertising that will be used. SCILD proposes to implement a "1-800-2LENNOX" advertising campaign in which callers that dial the 1-800 number will be routed automatically by the local telephone company to the SCILD number located nearest to the caller. SCILD's Board of Directors will determine which call originating areas will be assigned to each member, and will change the area assignments as new members join SCILD. You represent that the reason for assigning 1-800 calls to the member located nearest to the caller "is to facilitate the prompt and efficient handling of customer requests, thus furthering an image of responsiveness and reliability." Other SCILD members, however, will be free to compete for business of those who call the 1-800 number. The SCILD member to whom a 1-800 call is automatically routed will be required to compile a daily list of 1-800 calls received, and promptly to send the list of the callers' telephone numbers to SCILD, which, in turn, will promptly make those caller numbers

available to all other SCILD members so that they can solicit the business of those 1-800 callers. The purpose of the plan is to preserve in a practical manner, the opportunity of all SCILD members to compete for any or all 1-800 business, if they independently determine to do so.

You represent that all SCILD members currently advertise and compete with one another, and that participation in the cooperative advertising program will not in any manner limit their right or ability to advertise or compete against other SCILD members. In particular, you assert that "the 1-800 advertising will not affect dealer pricing and does not limit areas of competition by the independent Lennox dealers."

Based on the information that you have provided, the Department has no current intention to challenge the cooperative advertising program that SCILD and its members propose to undertake. To the extent that SCILD's members continue to compete with one another in selling and servicing Lennox equipment and operate the cooperative advertising program in accord with the statements and commitments in the materials that you have submitted to the Department, the proposed cooperative advertising program should not have any anticompetitive effect. Thus, as long as the pricing and territorial freedom of each dealer-member is not limited by virtue of its participation in the cooperative advertising program and Lennox customers remain free to deal with any Lennox dealer of their choice, the program should not restrain competition. However, should the program have the effect of operating as a mechanism to allocate customers, or territories, or in any other way to reduce competition among its SCILD's members, significant antitrust concerns would arise.

To the extent that the proposed cooperative advertising program provides information that reduces consumer search costs, it may have the procompetitive effect of intensifying interbrand competition.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed cooperative advertising program proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made

publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

Anne K. Bingaman
Assistant Attorney General